

Alison McDonald

December 17, 2009

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McDonald

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PATRICK CARIOU,

Plaintiff,

Index No.:

vs.

08 CIV 11327 (DAB)

RICHARD PRINCE, GAGOSIAN

GALLERY, INC., LAWRENCE

GAGOSIAN, and RIZZOLI

INTERNATIONAL PUBLICATIONS,

INC.,

Defendants.

-----X

DEPOSITION OF ALISON MCDONALD

New York, New York

Thursday, December 17, 2009

Reported by:

Bryan Nilsen, RPR

JOB NO. 305996-A

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1 McDonald
 2 said \$80 for a copy of that book?
 3 A. No.
 4 Q. When the exhibition commenced on
 5 Saturday, November 8th, was there a dinner that
 6 night at the Gramercy Park Hotel?
 7 A. There was a dinner. I don't
 8 remember if it was at the Gramercy Park Hotel.
 9 Q. Did you go?
 10 A. No.
 11 Q. Do you know how many people went?
 12 A. No.
 13 Q. Do you know what the purpose of the
 14 dinner was, if any?
 15 A. To celebrate the opening of an
 16 exhibition.
 17 Q. Did you have anything to do with
 18 planning the dinner?
 19 A. We printed a card for the dinner but
 20 not for planning the dinner.
 21 Q. Did you play any role at all in
 22 inviting people to come to the dinner?
 23 A. No.
 24 MS. BART: One moment, please.
 25 (Discussion off the record.)

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1 McDonald
 2 MS. BART: I think the witness wants
 3 to correct the record.
 4 Your question as posed was somewhat
 5 vague in that you said did you play any
 6 role in the inviting of people, and I
 7 think she answered no.
 8 But I think so that the record
 9 stands corrected I think she was going to
 10 correct her answer.
 11 A. We printed the invitation.
 12 Q. Right. Okay.
 13 When you say we, I mean I think
 14 I asked you if you personally played a role?
 15 A. I printed the card that was sent out
 16 for the invitation.
 17 Q. Printed it on what?
 18 A. Paper with ink.
 19 Q. But did you do it in your office on
 20 a copying machine?
 21 A. No.
 22 Q. How did you print the invitations?
 23 A. We put the text in an InDesign
 24 document and sent that document to a printer.
 25 MR. BROOKS: Let's mark as

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1 McDonald
 2 Plaintiff's Exhibit 103 a card stamped
 3 GGP001696A.
 4 (Plaintiff's Exhibit 103, invitation
 5 GGP001696A, was marked for identification,
 6 as of this date.)
 7 Q. Ms. McDonald, you've been handed a
 8 document that's been marked as Plaintiff's
 9 Exhibit 103. Is that the invitation you were
 10 just testifying about a few minutes ago?
 11 A. Yes.
 12 Q. There seems to be a blank line there
 13 to put in somebody's name, is that right?
 14 A. Yes.
 15 Q. Were these invitations mailed out?
 16 A. I don't know. I imagine, yeah.
 17 MS. BART: No, he doesn't want you
 18 to guess or imagine.
 19 A. I don't know.
 20 Q. Do you know if there was an
 21 invitation list?
 22 A. I don't know.
 23 Q. Okay, I guess I'll hold on to these.
 24 In addition to that invitation that
 25 we just looked at, Exhibit 103, was there an

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1 McDonald
 2 announcement of the exhibition with a photograph
 3 on it, do you know?
 4 A. Yes.
 5 MR. BROOKS: Let's mark as
 6 Plaintiff's Exhibit 104 a document that's
 7 been produced and Bates stamped GGP00139A
 8 and 140A front and back.
 9 (Plaintiff's Exhibit 104, GGP00139A
 10 and 140A, was marked for identification,
 11 as of this date.)
 12 Q. You've been handed Plaintiff's
 13 Exhibit 104. Do you know what it is?
 14 A. Yes.
 15 Q. Can you tell us?
 16 A. An announcement card for the
 17 exhibition.
 18 Q. Do you know if these announcement
 19 cards were mailed out?
 20 A. Yes.
 21 Q. Do you know to whom they were mailed
 22 out, I don't mean the names of all the people,
 23 but what types of people, if you know?
 24 MS. BART: Objection, form.
 25 MR. HAYES: Objection, form.

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1 McDonald
 2 MR. SHERMAN: Objection, form.
 3 Q. You can answer.
 4 A. Yes.
 5 Q. Can you tell me?
 6 A. We have a mailing list of about
 7 7,500 people.
 8 Q. So these announcement cards were
 9 mailed to people on that list?
 10 MS. BART: Objection, form.
 11 Q. You can answer.
 12 A. Yes.
 13 Q. Do you notice on the front of the
 14 announcement card an image of a man, do you see
 15 him?
 16 A. I see a painting in a studio, yeah.
 17 The painting has a man in it, yes.
 18 Q. I couldn't hear what you said.
 19 MR. BROOKS: Read it back.
 20 (Record read.)
 21 BY MR. BROOKS:
 22 Q. Why don't you look in that book, the
 23 Canal Zone book, and I think if you look at
 24 page C00148 perhaps you will find something.
 25 MS. BART: You're going to have to

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1 McDonald
 2 give us maybe the page number of the
 3 actual catalog.
 4 MR. BROOKS: It's in the second
 5 insert I think. It's C00148. I think
 6 there's a Post-it there with that number.
 7 MS. BART: We're there.
 8 MR. BROOKS: That is the number,
 9 okay.
 10 BY MR. BROOKS:
 11 Q. So you said something about a
 12 picture in a studio, is this what you're
 13 referring to, the C148?
 14 MS. BART: Objection, form.
 15 A. This is a different picture.
 16 Q. This is a different picture than the
 17 announcement card?
 18 A. Yes.
 19 Q. How do you know that?
 20 A. It's a different angle.
 21 Q. Okay. But if you look at the
 22 announcement card there's a painting that
 23 appears to be propped up on two cans of paint,
 24 right?
 25 A. Yes.

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1 McDonald
 2 Q. And if you look at C148 the same
 3 seems to be true, there's a picture propped up
 4 on two cans of paint, right?
 5 MS. BART: Objection, form.
 6 MR. HAYES: Objection, form.
 7 Q. You can answer.
 8 A. There is a painting on two cans of
 9 paint.
 10 Q. So you're saying that the photo is
 11 from a different angle, but is it correct that
 12 the image in Exhibit 104 in the announcement is
 13 maybe a different photo of the same painting
 14 that's propped on the two cans in C148?
 15 A. Yes.
 16 Q. But it's from a different angle?
 17 A. Yes.
 18 Q. Okay. And do you know if the
 19 painting that's shown on C148 in the insert in
 20 the book, do you know if that painting was
 21 actually exhibited at the Canal Zone exhibition?
 22 A. I don't know.
 23 Q. Could you look at the very first
 24 painting in the book, you have to go back to the
 25 beginning.

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1 McDonald
 2 (Witness looks at exhibit.)
 3 Q. No, no, not on the cover.
 4 Number 1, it's called Graduation.
 5 It's on page C95.
 6 MS. BART: C96?
 7 Q. Well, 95 says Graduation, right?
 8 Correct?
 9 A. Yes.
 10 MS. BART: There's no number on
 11 these.
 12 Q. Doesn't it say 1, Graduation?
 13 A. Graduation, yes.
 14 MS. BART: But there's no Bates
 15 number on it.
 16 Q. Right. That's C95.
 17 Now, the next page is a painting
 18 called Graduation, correct?
 19 A. Yes.
 20 Q. Now, absent the paint cans, is that
 21 painting Graduation the same image that's
 22 depicted on the announcement?
 23 MS. BART: Objection, form.
 24 Q. You can answer.
 25 A. Yes.

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1 McDonald
 2 one?
 3 MR. BROOKS: I'm done with that
 4 page, yes, but she should keep the book.
 5 BY MR. BROOKS:
 6 Q. Did you ever ask anyone where the
 7 images of the Rastafarians that are in many of
 8 these Canal Zone paintings came from?
 9 MS. BART: Objection, form.
 10 MR. HAYES: Objection, form.
 11 Q. You can answer.
 12 A. No.
 13 Q. Did you ever hear anyone explaining
 14 where they came from?
 15 MS. BART: Objection, form.
 16 A. No.
 17 Q. Have you ever seen this book, it's
 18 called Yes Rasta?
 19 A. No.
 20 Q. Okay, you can give it back to me.
 21 Thank you.
 22 Were there newspaper advertisements
 23 for the Canal Zone exhibition?
 24 A. Yes.
 25 Q. Do you remember where the

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1 McDonald
 2 Q. In the New York Times were there two
 3 ads?
 4 A. I don't remember.
 5 Q. Was there an ad just for the Canal
 6 Zone exhibition in the New York Times?
 7 A. I remember it was on a list of other
 8 exhibitions the gallery was having in the
 9 New York Times ad.
 10 Q. Right. One other, right, a painter
 11 with a Japanese name?
 12 A. I think it was Hiroshi Sugimoto.
 13 Q. To your knowledge did Mr. Gagosian
 14 review the ads before they were placed in the
 15 newspapers?
 16 A. Yes.
 17 Q. That's a yes?
 18 A. Yes.
 19 Q. Do you know if Mr. Prince reviewed
 20 the ads?
 21 A. I don't know for sure, no.
 22 Q. I'm going to hand you a series of
 23 e-mails that have been collectively marked as
 24 Plaintiff's Exhibit 45 previously.
 25 The first page of Exhibit 45

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1 McDonald
 2 advertisements were placed?
 3 A. The Art Newspaper, Financial Times,
 4 and New York Times.
 5 Q. How about W?
 6 A. The magazine? Yes, W.
 7 Q. How about Art Forum, Art in America,
 8 and Art and Auction?
 9 MS. BART: Objection.
 10 A. Yes.
 11 Q. All three?
 12 A. There were more than -- did you
 13 say W?
 14 Q. I just said -- no, after W I said
 15 Art Forum?
 16 A. Yes.
 17 Q. Were there ads there?
 18 A. One ad, yes.
 19 Q. And Art in America, was there an ad
 20 for the Canal Zone exhibition there?
 21 A. Yes.
 22 Q. And how about Art and Auction?
 23 A. Yes.
 24 Q. One ad in each of them?
 25 A. Yes.

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1 McDonald
 2 GGP001991 talks about an announcement card and
 3 adverts, and something -- it says Larry reviewed
 4 the options and wants to run the attached ad,
 5 parenthesis, AF Prince placeholder, closed
 6 parenthesis, in Art Forum, et cetera.
 7 Do you know what the Prince
 8 placeholder, it's all in capital letters, do you
 9 know what that is?
 10 A. She's referring to the file name
 11 that's attached.
 12 Q. And is that an image that ran in the
 13 advertisements?
 14 MS. BART: Objection, form.
 15 MR. HAYES: Objection, form.
 16 A. That was attached to the e-mail.
 17 I'd have to check.
 18 Q. Do you know if the image in the
 19 advertisements was an image of the same
 20 Rastafarian who is in the announcement card
 21 Exhibit 104?
 22 MR. HAYES: Objection, form.
 23 MS. BART: Objection, form.
 24 And I'd like to, since this doesn't
 25 have this witness's name on it, I'd ask

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|---|---|
| <p style="text-align: right;">Page 46</p> <p>1 McDonald</p> <p>2 her to see if she's ever seen this before,</p> <p>3 the exhibit.</p> <p>4 MR. BROOKS: I understand.</p> <p>5 BY MR. BROOKS:</p> <p>6 Q. Do you know?</p> <p>7 A. The same painting was used in the</p> <p>8 ad.</p> <p>9 Q. I know. I'm asking you?</p> <p>10 A. Yes.</p> <p>11 Q. It was? Okay.</p> <p>12 A. In the magazine ads.</p> <p>13 Q. What about the newspaper ads?</p> <p>14 A. No.</p> <p>15 Q. What was used in the newspaper ads?</p> <p>16 MS. BART: Objection, form.</p> <p>17 A. Text only.</p> <p>18 Q. No picture?</p> <p>19 A. No paintings.</p> <p>20 Q. So which were the magazine ad or</p> <p>21 ads?</p> <p>22 MS. BART: Objection, form.</p> <p>23 I don't understand. What do you</p> <p>24 mean?</p> <p>25 Q. Okay, we'll come back to it.</p> | <p style="text-align: right;">Page 48</p> <p>1 McDonald</p> <p>2 Q. Could you look at page GGP002282,</p> <p>3 which is part of that same Exhibit 45.</p> <p>4 This is about the advertisement in</p> <p>5 W Magazine?</p> <p>6 A. Yes.</p> <p>7 Q. And there you say an image was used,</p> <p>8 a photo of the same Rastafarian that was in the</p> <p>9 announcement card?</p> <p>10 MS. BART: Objection, form.</p> <p>11 MR. HAYES: Objection, form.</p> <p>12 Q. You can answer.</p> <p>13 A. It's a different painting in the</p> <p>14 W ad.</p> <p>15 Q. But the same Rastafarian, right?</p> <p>16 MS. BART: Objection, form.</p> <p>17 MR. HAYES: Objection, form.</p> <p>18 A. I don't remember.</p> <p>19 Q. Okay. Did Larry Gagosian and</p> <p>20 Richard Prince approve the ad in W Magazine?</p> <p>21 MR. HAYES: Objection, form.</p> <p>22 MS. BART: Join.</p> <p>23 A. Larry approved. I did not have any</p> <p>24 interaction with Richard Prince for approval.</p> <p>25 Q. Now, on the next page, which is</p> |
| <p style="text-align: right;">Page 47</p> <p>1 McDonald</p> <p>2 Look at the second page of</p> <p>3 Exhibit 45, please. Do you see it says but LG</p> <p>4 wants to make sure the ad is large and very</p> <p>5 clear because it has two shows on it, do you see</p> <p>6 that?</p> <p>7 A. Yes.</p> <p>8 Q. And then below that there's an</p> <p>9 e-mail from Nicole Heck October 17th saying</p> <p>10 run the attached again in NYT on Friday,</p> <p>11 October 24th, and then below that it says Prince</p> <p>12 and Sugimoto both open the week after that, does</p> <p>13 he want to run one ad announcing both on Friday,</p> <p>14 November 7th.</p> <p>15 Do you recall whether an ad was</p> <p>16 taken in the New York Times for both of those</p> <p>17 shows, Prince and Sugimoto?</p> <p>18 A. Yes.</p> <p>19 Q. And you don't think there were</p> <p>20 any images, just printed words in that ad in</p> <p>21 The Times?</p> <p>22 MS. BART: Objection, form, and</p> <p>23 asked and answered.</p> <p>24 Q. You can answer.</p> <p>25 A. Yes.</p> | <p style="text-align: right;">Page 49</p> <p>1 McDonald</p> <p>2 GGP002418, it says I told Nicole Larry likes the</p> <p>3 Prince ad with just, all capital letters, the</p> <p>4 Rasta man, not the one in the studio. For the</p> <p>5 announcements he likes the Rasta man poster on</p> <p>6 two paint cans with no books in the picture.</p> <p>7 Do you remember seeing a copy of</p> <p>8 this e-mail?</p> <p>9 A. No.</p> <p>10 Q. Is it correct though that the</p> <p>11 announcement had the picture in the studio on</p> <p>12 the paint can without books?</p> <p>13 MS. BART: Objection, form.</p> <p>14 Q. And I'm showing you Exhibit 104?</p> <p>15 A. Yes.</p> <p>16 Q. And the advertisement just had a</p> <p>17 Rastafarian, not the one in the studio, is that</p> <p>18 right?</p> <p>19 MS. BART: Objection, form.</p> <p>20 MR. HAYES: Objection, form.</p> <p>21 A. It had that same painting in the ad,</p> <p>22 yes.</p> <p>23 Q. Which ad?</p> <p>24 A. Which ad?</p> <p>25 Q. Yes.</p> |

| Page 50 | Page 52 |
|---|---|
| <p>1 McDonald</p> <p>2 A. The Art Forum, Art in America, Art</p> <p>3 and Auction.</p> <p>4 Q. They had a painting, a picture of</p> <p>5 the same painting?</p> <p>6 A. Yes.</p> <p>7 Q. But the New York Times didn't?</p> <p>8 MS. BART: Objection, form, and</p> <p>9 asked and answered.</p> <p>10 Q. Is that what you're saying?</p> <p>11 MS. BART: Third time.</p> <p>12 A. No image was in the New York Times.</p> <p>13 Q. What about the Financial Times?</p> <p>14 A. No.</p> <p>15 Q. I'm going to show you a document</p> <p>16 which has previously been marked as Exhibit 52.</p> <p>17 Is that the image that was used in</p> <p>18 some of the ads anyway?</p> <p>19 MS. BART: Can we just have one of</p> <p>20 the extras that you have there, please?</p> <p>21 I think John needs one, right?</p> <p>22 MR. BROOKS: You do?</p> <p>23 MR. SHERMAN: Yes.</p> <p>24 A. I don't --</p> <p>25 MS. BART: Just one minute. I want</p> | <p>1 McDonald</p> <p>2 magazine ads.</p> <p>3 She's testified to a number of ads,</p> <p>4 some of which had images she said from</p> <p>5 the same painting, and I want to know if</p> <p>6 Exhibit 52 is the image that was used</p> <p>7 in the ads in Art Forum, Art in America,</p> <p>8 Art and Auction, the Art Newspaper, and W.</p> <p>9 MS. BART: We'll take it under</p> <p>10 advisement.</p> <p>11 But just so that I understand I know</p> <p>12 what you're asking me, are you talking</p> <p>13 about the entirety that includes the title</p> <p>14 that says Richard Prince at the top, or</p> <p>15 are you talking about the cutout in the</p> <p>16 middle, in other words, are you talking</p> <p>17 about the entirety?</p> <p>18 I don't know what you're asking.</p> <p>19 MR. BROOKS: Well, this is how it</p> <p>20 was produced to me by you.</p> <p>21 MS. BART: That's irrelevant.</p> <p>22 You're asking us for a stipulation,</p> <p>23 Mr. Brooks, and I'm asking you, are you</p> <p>24 saying just the thing in the middle or are</p> <p>25 you talking about the entirety --</p> |
| Page 51 | Page 53 |
| <p>1 McDonald</p> <p>2 to hear the question back. I'm not sure</p> <p>3 there was one.</p> <p>4 MR. BROOKS: There was.</p> <p>5 Can you read the question back,</p> <p>6 please.</p> <p>7 (Record read.)</p> <p>8 MS. BART: Object to form.</p> <p>9 Q. You can answer.</p> <p>10 A. I don't remember. I don't remember.</p> <p>11 Q. Does it look like what was used in</p> <p>12 the ads --</p> <p>13 MS. BART: Objection.</p> <p>14 Q. -- as you've been describing it?</p> <p>15 MS. BART: Objection, form.</p> <p>16 MR. HAYES: Objection, form.</p> <p>17 MS. BART: The witness isn't here to</p> <p>18 speculate.</p> <p>19 Q. You can answer.</p> <p>20 A. It's the same type. I don't know --</p> <p>21 I don't remember this.</p> <p>22 RQ MR. BROOKS: Okay. If the witness</p> <p>23 doesn't know I'm going to request that</p> <p>24 Gagosian tell us whether Exhibit 52 is the</p> <p>25 image that was used in newspaper and</p> | <p>1 McDonald</p> <p>2 MR. BROOKS: The entirety. But if</p> <p>3 the ad didn't say Richard Prince and only</p> <p>4 had the image, then you can tell me that.</p> <p>5 I just want to find out.</p> <p>6 MS. BART: We'll take it under</p> <p>7 advisement.</p> <p>8 MR. BROOKS: Well, I'm certainly</p> <p>9 entitled to know what images were used in</p> <p>10 the newspaper and magazine ads.</p> <p>11 If this witness can't -- I mean I</p> <p>12 think it's clear from her testimony that</p> <p>13 this is exactly what was used since there</p> <p>14 are no paint cans, it's not in the studio,</p> <p>15 it's the same painting. If it's not --</p> <p>16 MS. BART: Well, you don't know</p> <p>17 because it's cut off at the bottom, so --</p> <p>18 MR. BROOKS: Well, that's how it was</p> <p>19 produced to me by you. So that's the best</p> <p>20 I can do, I'm sorry.</p> <p>21 MS. BART: No, this is how it was</p> <p>22 originally made. We didn't cut anything</p> <p>23 off, Mr. Brooks.</p> <p>24 MR. BROOKS: Well, okay.</p> <p>25 MS. BART: We'll take your request</p> |

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| <p style="text-align: right;">Page 54</p> <p>1 McDonald</p> <p>2 under advisement.</p> <p>3 BY MR. BROOKS:</p> <p>4 Q. Can you take a look at the Canal</p> <p>5 Zone book again, please, and look at page</p> <p>6 C00122.</p> <p>7 (Witness looks at exhibit.)</p> <p>8 Q. C122 is a painting called</p> <p>9 Meditation, correct?</p> <p>10 A. Yes.</p> <p>11 Q. It's painting number 6 in the book?</p> <p>12 A. Yes.</p> <p>13 Q. Is that painting the same image as</p> <p>14 in Exhibit 52 in the document that I've been</p> <p>15 asking whether or not that's a newspaper ad --</p> <p>16 a magazine ad?</p> <p>17 MS. BART: Objection, form.</p> <p>18 Q. You can answer.</p> <p>19 A. Yes, same painting.</p> <p>20 Q. And it has no paint cans, right,</p> <p>21 it's not from the studio, correct?</p> <p>22 MS. BART: Objection, form.</p> <p>23 Q. You can answer.</p> <p>24 A. Yes.</p> <p>25 MR. HAYES: Objection, form.</p> | <p style="text-align: right;">Page 56</p> <p>1 McDonald</p> <p>2 marked as 53A, so it's two exhibits.</p> <p>3 Could you look at the --</p> <p>4 MS. BART: Just give her a second to</p> <p>5 look at it.</p> <p>6 (Witness looks at exhibit.)</p> <p>7 Q. Okay. Look at the second page,</p> <p>8 GG002763. Did you receive a copy of the e-mail</p> <p>9 on the top from Jessica Arisohn?</p> <p>10 A. Yes.</p> <p>11 Q. And who is Jessica Arisohn?</p> <p>12 A. A gallery assistant.</p> <p>13 Q. At the Gagosian Gallery?</p> <p>14 A. Yes.</p> <p>15 Q. And who is Andie Trainer who wrote</p> <p>16 the e-mail beneath the first one in the chain?</p> <p>17 A. A gallery receptionist.</p> <p>18 Q. Do you know Ryan from Rare Posters?</p> <p>19 A. Know him? No.</p> <p>20 Q. Do you know who he is?</p> <p>21 A. Sure, yeah.</p> <p>22 Q. Who is he?</p> <p>23 A. He's someone who buys posters in</p> <p>24 bulk from us occasionally.</p> <p>25 Q. Do you see she said in the e-mail</p> |
| <p style="text-align: right;">Page 55</p> <p>1 McDonald</p> <p>2 MS. BART: I'll instruct the witness</p> <p>3 not to speculate.</p> <p>4 MR. BROOKS: She already answered</p> <p>5 yes.</p> <p>6 You're saying it's speculating when</p> <p>7 I ask her if there are paint cans there?</p> <p>8 MS. BART: Well, what I'm saying to</p> <p>9 you is that --</p> <p>10 MR. BROOKS: Well, never mind. She</p> <p>11 answered.</p> <p>12 MS. BART: Richard Prince is the</p> <p>13 best person to ask these questions of, not</p> <p>14 a witness who didn't create these works of</p> <p>15 art.</p> <p>16 MR. BROOKS: Okay.</p> <p>17 BY MR. BROOKS:</p> <p>18 Q. With respect to these announcement</p> <p>19 cards, do you know if at the end of the show,</p> <p>20 the exhibition, you had leftover cards,</p> <p>21 announcement cards?</p> <p>22 A. Yes.</p> <p>23 Q. I'm going to show you what's been</p> <p>24 previously marked as Plaintiff's Exhibit 53, and</p> <p>25 actually the last two pages were previously</p> | <p style="text-align: right;">Page 57</p> <p>1 McDonald</p> <p>2 but somehow it doesn't seem right for him to be</p> <p>3 selling, capital letters, our invitations, do</p> <p>4 you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Did you get involved in the question</p> <p>7 of whether invitations should be given to Ryan?</p> <p>8 MS. BART: Objection, form.</p> <p>9 A. He normally sells posters.</p> <p>10 Q. Right. Okay.</p> <p>11 Let's look at the next page.</p> <p>12 Jessica Arisohn, now she's given his</p> <p>13 name, Ryan Dowler wants Prince Canal Zone, do</p> <p>14 you see that, it's the second e-mail?</p> <p>15 A. Yes.</p> <p>16 Q. Andie says we have three extra boxes</p> <p>17 left, and that was addressed -- that e-mail was</p> <p>18 addressed to you as well, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And then Nicole Heck wrote to</p> <p>21 you and Jessica Arisohn and Darlina Goldak,</p> <p>22 Shouldn't we get a percentage of the sale if he</p> <p>23 is selling something we paid to produce, do you</p> <p>24 see that?</p> <p>25 A. Yes.</p> |

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1 McDonald
2 Q. Did you agree with that?
3 MS. BART: Objection, form.
4 Q. You can answer.
5 A. I thought we should be reimbursed
6 for what we paid to make them.
7 Q. Reimbursed by Ryan's company?
8 A. Yeah, instead of recycling.
9 Q. Instead of?
10 A. Recycling the extra invitations.
11 Q. And if you look at the next page
12 2766, GG -- actually, let's stick with the GGP,
13 GGP003063, you wrote an e-mail saying we should
14 sell them to him, correct?
15 A. Yes.
16 Q. And what was your reasoning for
17 that?
18 A. They would have been recycled or
19 discarded otherwise.
20 Q. Why not just give them to him?
21 MS. BART: Objection, form.
22 Q. You can answer.
23 A. I just thought we should get
24 reimbursed for what we had spent to make them.
25 Q. And did you sell these materials to

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1 McDonald
2 him, do you know?
3 A. I don't know.
4 Q. And in these e-mails there's a
5 reference to invitations, right?
6 Was that a reference to Exhibit 103,
7 which is the invitation you had printed, or to
8 104, which is the announcement, what we've been
9 calling the announcement card?
10 A. The announcement card.
11 Q. 104?
12 A. Yes.
13 Q. That's what Ryan wanted, correct?
14 A. Yes.
15 Q. To make posters?
16 MS. BART: Objection, form.
17 MR. HAYES: Objection, form.
18 A. No, he wasn't making posters.
19 Q. What was he doing?
20 A. Selling the cards I think.
21 Q. Selling the cards? I see.
22 It's just that on the first page --
23 okay, I hear what you're saying.
24 On the first page of Exhibit 53 it
25 says Ryan from Rare Posters -- okay, so you're

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1 McDonald
2 saying, your understanding was he wanted to sell
3 the actual announcement cards, not make them
4 into posters, is that right?
5 A. Yes.
6 Q. Okay. If I asked this before, I
7 apologize, but were these announcement cards
8 sold to Ryan?
9 MS. BART: Objection, form.
10 Q. If you know?
11 MS. BART: And asked and answered.
12 A. I don't know.
13 Q. Okay. Did I ask you that before?
14 MS. BART: Yes.
15 Q. And what did you say before?
16 A. I don't know.
17 Q. Okay. All right. It wasn't a trick
18 question. I don't remember it.
19 MS. BART: You never know with
20 Mr. Brooks.
21 Q. So you don't know if they were
22 sold --
23 A. No.
24 Q. -- to him? Okay.
25 MS. BART: Objection.

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1 McDonald
2 Q. Do you know Glenn O'Brien?
3 A. Barely, yes.
4 Q. Who is he?
5 A. He worked with Andy Warhol.
6 I believe he was involved in Interview Magazine.
7 I don't know him very well.
8 MR. BROOKS: Did you get that,
9 Interview, Interview Magazine?
10 (Discussion off the record.)
11 BY MR. BROOKS:
12 Q. I'm going to hand you a document
13 that's previously been marked as Plaintiff's
14 Exhibit 29.
15 If you look at the first page of
16 Exhibit 29, GGP001421, there appears to be at
17 the bottom an e-mail from Glenn O'Brien to Betsy
18 Biscone at the Prince studio asking for some
19 images for the interview, do you see that?
20 A. Yes.
21 Q. Correct?
22 A. Yes.
23 Q. And did you become aware that
24 Mr. O'Brien wanted some images for Interview
25 Magazine?

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1 McDonald
2 MR. HAYES: Objection, form.
3 A. No.
4 Q. The cover of pulp fiction novels?
5 MR. HAYES: Objection, form.
6 MS. BART: Join.
7 A. Sometimes, I think, yes.
8 Q. Were you familiar with his painting
9 Spiritual America?
10 MR. HAYES: Objection, form.
11 A. Is that a painting?
12 Q. It's a rephotograph of a picture of
13 Brooke Shields when she was ten years old?
14 A. I think it's a photograph, yes.
15 Q. And were you aware that Mr. Prince
16 rephotographed that photograph that some other
17 photographer had taken?
18 MS. BART: Objection, form.
19 MR. HAYES: Form.
20 Q. You can answer.
21 A. That photograph I'm familiar with
22 recently.
23 Q. Do you know how long Gagosian
24 Gallery has represented Mr. Prince?
25 A. I don't know.

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1 McDonald
2 Q. Were you aware that Mr. Prince had a
3 retrospective at the Guggenheim Museum in late
4 2007?
5 A. Yes.
6 Q. Did you go to it?
7 A. No.
8 Q. Did Gagosian represent Mr. Prince at
9 that time?
10 A. I don't know.
11 Q. Did you know in 2008 that Mr. Prince
12 had a practice of appropriating images created
13 by others and including those images in his
14 work?
15 MS. BART: Objection, form.
16 MR. HAYES: Form.
17 Q. You can answer.
18 A. Can you say it again?
19 Q. He'll read it again.
20 (Record read.)
21 A. I knew he was an appropriation
22 artist, yes.
23 Q. Well, how do you define an
24 appropriation artist?
25 MR. HAYES: Objection, form.

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1 McDonald
2 A. An artist who uses materials that
3 influence him and reinvents them to make
4 something new.
5 Q. He uses materials that influence
6 him, materials created by others, right?
7 MS. BART: Objection, form.
8 MR. HAYES: Objection, form.
9 A. Other painters, other magazines.
10 Q. Other photographers?
11 MS. BART: Objection, form.
12 MR. HAYES: Objection, form.
13 Q. You can answer.
14 A. Could be, yeah.
15 Q. Did you personally do anything to
16 find out whether any of the images in these
17 Canal Zone paintings were taken from copyrighted
18 material?
19 MS. BART: Objection, form.
20 MR. HAYES: Objection, form.
21 Q. You can answer.
22 A. No.
23 Q. Do you know if anyone at Gagosian
24 Gallery did that?
25 MS. BART: Objection, form.

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1 McDonald
2 Q. You can answer.
3 A. I don't know.
4 Q. Did you ever try to find out -- I
5 know you didn't ask him you said already, but
6 did you ever try to find out where the images in
7 these Canal Zone paintings, specifically the
8 Rastafarian images, came from?
9 MS. BART: Objection, form.
10 MR. HAYES: Objection, form.
11 Q. You can answer.
12 A. No.
13 Q. To your knowledge did anyone at
14 Gagosian Gallery make an attempt to find out
15 where the Rastafarian images came from?
16 MS. BART: Objection, form.
17 MR. HAYES: Objection, form.
18 Q. You can answer.
19 A. I don't know.
20 MR. BROOKS: Let's take five minutes
21 and I might be finished. I want to look
22 at my notes.
23 MS. BART: Okay.
24 (Recess taken: 3:40 p.m.)
25 (Proceedings resumed: 3:48 p.m.)